

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. NO.: 3501-01  
BILL NO.: HB 1707  
SUBJECT: Employees and Employers  
TYPE: Original  
DATE: April 4, 2000

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**FISCAL SUMMARY**

| <b>ESTIMATED NET EFFECT ON STATE FUNDS</b>                          |            |            |            |
|---|------------|------------|------------|
| FUND AFFECTED   | FY 2001    | FY 2002    | FY 2003    |
| None  | \$0        | \$0        | \$0        |
|   |            |            |            |
| <b>Total Estimated<br/>Net Effect on <u>All</u><br/>State Funds</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |

| <b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>                          |            |            |            |
|---|------------|------------|------------|
| FUND AFFECTED   | FY 2001    | FY 2002    | FY 2003    |
| None  | \$0        | \$0        | \$0        |
|   |            |            |            |
| <b>Total Estimated<br/>Net Effect on <u>All</u><br/>Federal Funds</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |

| <b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b> |            |            |            |
|--|------------|------------|------------|
| FUND AFFECTED                              | FY 2001    | FY 2002    | FY 2003    |
| <b>Local Government</b>                    | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 6 pages.

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## FISCAL ANALYSIS

### ASSUMPTION

Officials of the **Department of Natural Resources (DNR)** do not expect fiscal impact as a result of the proposal. They note that seven days appears to be a reasonable amount of time to arrange for the employee or former employee to view personnel files. Therefore, none of the remedies for violation of the statutes should be realized.

Officials of the **Office of Prosecution Services, Office of the Secretary of State, and the Office of Administration - Division of Personnel** assume the proposal would have no fiscal impact on their agencies.

Officials of the **Department of Transportation (MoDOT)** assume that since MoDOT currently has in place a policy that allows employees to access their personnel files, there would be no fiscal impact to the department. However, if the number of employees that desire access to their files or the number of grievances that result from such activities increases, MoDOT may require up to two additional FTE (one attorney and one human resources specialist).

Officials of the **Office of State Courts Administrator (OSCA)** note that with regards to the judiciary as an employer, there are over 350 statutory appointing authorities in the judiciary. Practices vary widely as to what personnel records are kept. In larger urban courts, there may be some increased work associated with compliance with the law. Increased costs should not approach \$100,000. With regards to the potential for increased litigation, OSCA officials would expect a series of test cases to explore the parameters of the law. After a period of adjustment, if there are a significant number of additional civil cases, there would be a corresponding increase in the work and state costs for the judiciary.

Officials of the **Department of Labor and Industrial Relations (DOL)** assume that the proposal would allow an employee to file a complaint with DOL if the employee alleges that he/she has been denied his/her rights. The DOL shall investigate the complaint, attempt to resolve the complaint and if not resolved, the DOL may commence action in the circuit court. Currently, the DOL does not have anyone who investigates these kind of cases. Therefore, the proposal would require an investigator and an attorney. It is estimated that each position would require .25 FTE. Costs for personal services, fringe benefits and related expense and equipment would total \$25,537 for FY 2001, \$31,559 for FY 2002, and \$32,856 for FY 2003.

Officials of the **Department of Social Services - Personnel and Labor Relations Section** assume the department has procedures in place regarding personnel records similar to this legislation., and the proposal would have no fiscal impact.

ASSUMPTION (continued)

Officials of the **Department of Social Services (DSS) - Division of Legal Services (DLS)** note that there are 10,000 employees within DSS. Assuming that only 1% of these employees make a personnel record request about which there is a dispute going to DOL, DLS will have to handle 100 of these cases. It is estimated that DLS would spend 40 hours working with DSS personnel officers, assembling materials for discovery, interviews, appearances before the DOL and developing strategy and tactics for the cases. This would result in 4,000 hours of time required to handle the caseload each fiscal year. At 2,080 hours per attorney per year, this would require the addition of two new attorneys and one clerical support. DLS also estimates that 50% of the 100 cases will be taken to circuit court where damages can be sought. The Attorney General has the lead in cases involving money damages against the state or its agencies. At the same time, DLS provides coordinating counsel with the assigned attorney general and is involved in case and witness preparation and developing strategy and tactics for the cases. It is estimated that the assigned coordinating counsel with DLS would spend 40 hours working with witnesses, assembling materials for discovery and/or trial, and coordination with the assigned attorney general. Based on 50 cases and 40 hours per case, the cases would consume 2,000 hours. At 2,080 hours per attorney per year, this would require one new attorney and one-half clerical support. Total FTE needs would be three attorneys and 1.5 clerk typists. Costs for personal services, fringe benefits, and related equipment and expense would total \$186,885 in FY 2001, \$211,914 in FY 2002, and \$217,375 in FY 2003.

**Oversight** assumes that most, if not all, state and local government agencies would already have procedures in place allowing employees to review their personnel files. This proposal should not directly result in significant additional requests by employees or former employees to review their personnel files or in related grievances filed by state and local government employees. Oversight assumes it is also likely that most private sector employers have such procedures in place. If DOL should experience the filing of a significant number of grievances by employees, Oversight assumes DOL will request additional personnel as needed through the normal budget process. Additional recordkeeping responsibilities required by the proposal should be able to be performed by employers with existing resources.

|   | FY 2001<br>(10 Mo.) | FY 2002 | FY 2003 |
|---|---------------------|---------|---------|
| <u>FISCAL IMPACT - State Government</u> |                     |         |         |
|   | \$0                 | \$0     | \$0     |

|   | FY 2001<br>(10 Mo.) | FY 2002 | FY 2003 |
|---|---------------------|---------|---------|
| <u>FISCAL IMPACT - Local Government</u> | \$0                 | \$0     | \$0     |

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This proposal establishes the Personnel Records Review Act. In its main provisions, the proposal:

- (1) Requires employers to permit employees to review all or part of personnel documents that have been used in stated personnel practices which have affected an employee's employment status;
- (2) Requires employers to grant at least two inspection requests by employees in a calendar year if such requests are made at reasonable intervals, unless a collective bargaining agreement states otherwise;
- (3) Requires employers to grant the written review request of an employee within seven working days of such request. Employers can have an additional seven days to comply with the initial written request if the employer can reasonably show that the first deadline cannot be met;
- (4) Specifies the location and the time of the personnel documents review;
- (5) Prohibits employees from taking personnel documents from the review site and gives employers the right to protect the personnel records from loss, damage, or alteration;
- (6) Allows employers to mail a copy of an employee's personnel record upon written request and to charge a duplication fee for personnel records copied;
- (7) Specifies the procedures for using personnel record information in a judicial or quasi-judicial proceeding;
- (8) Specifies the procedure an employee can use to have a third party review the employee's personnel record if the employee is involved in a current grievance against an employer;

DESCRIPTION

- (9) Contains procedures for divulging discipline of employees by employers and former employers;
- (10) Allows employers to review a personnel record before release to a third party, with exceptions;
- (11) Prohibits employers from gathering or keeping a record of an employee's non-employment activities or communications unless submitted in writing or approved by an employee;
- (12) Allows employers to maintain a record of an employee's activity which occurs on the employer's premises or during working hours which constitutes criminal conduct or can reasonably be expected to harm or cause financial liability to an employer's property, operation, or business;
- (13) Requires the Director of the Department of Labor and Industrial Relations or an authorized representative to enforce the provisions and develop rules facilitating the administration and enforcement of the act;
- (14) Specifies the procedures governing an employee's filing of a complaint with the department;
- (15) Specifies the investigatory and judicial processes governing the complaint process;
- (16) Allows employees to commence legal action against employers who violate provisions of the act if stated procedures have failed;
- (17) Contains penalty provisions concerning an employer's failure to comply with a court order; and
- (18) Makes it a class A misdemeanor for employers and agents or officers of private employers to take retributive actions against an employee who institutes or who participates in any proceedings covered by the act.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

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SOURCES OF INFORMATION

Department of Labor and Industrial Relations  
Office of Administration - Division of Personnel  
Department of Transportation  
Department of Natural Resources  
Department of Social Services - Personnel and Labor Relations Section, Division of Legal  
Services  
Office of the Secretary of State  
Office of State Courts Administrator  
Office of Prosecution Services



Jeanne Jarrett, CPA  
Director  
April 4, 2000